

stated on the record and ordering the parties to reduce their agreement to writing and submit an agreed order for adoption by the Court within 10 days from the date of the order (Dkt. No. 524). The deadline to submit the agreed order was subsequently extended by agreement of the parties until July 9, 2010. The parties then advised the Court that they were unable to reach agreement and requested that the Court further extend the deadline and permit the parties to either submit an agreed order as required by the Court's June 17, 2010 Order (Dkt. No. 524) or a joint motion containing Plaintiff's and Defendants' respective views as to the appropriate stipulation by July 12, 2010. The Court ordered that the parties were to submit an agreed proposed order by July 12, 2010, or appear for a hearing on this issue (Dkt. No. 560). The parties did not submit an agreed order and the Court held a hearing on this and other pending discovery issues on July 27, 2010. Prior to the hearing, the parties submitted notices informing the Court of the agreements that had been reached with regard to the stipulation as well as their disagreements (Dkts. No. 585 and 587). The parties also submitted competing stipulations for the Court's consideration.

Having considered the competing stipulations and the arguments of the parties, the Court hereby ORDERS that:

1. Defendants' Motion to Compel Compliance With Patent Rule 3-1 and Compel Discovery Regarding Infringement and Damages (Dkt. No. 399) is withdrawn. Plaintiff Wi-LAN, Inc.'s Motion to Strike Defendants' Existing and Proposed Amended Invalidity Contentions and To Compel Defendants' Compliance With the Court's Rules Governing Invalidity Contentions and Defendants' Response to Wi-LAN's Common Interrogatory No. 9 (Dkt No. 398) is withdrawn. Defendants' Motion for Leave to Amend Invalidity

Contentions (Dkt. No. 362) ("Motion to Amend") is GRANTED, subject to the conditions outlined in paragraphs 2 through 6 below.

2. Defendants will identify claim elements with respect to which they seek additional specificity from the asserted claims of the '222, '802, '759 and '323 patents, and, to assist Wi-LAN in providing greater specificity in connection with those claim elements, may identify particular terms within a claim element. For all source code that was produced prior to July 19, 2010, Wi-LAN will supplement those product specific claim charts which have been served as of June 18, 2010 ("Wi-LAN's Claim Charts") within 14 days of receiving such identification of claim elements, for the `222 and `802 Patents, and within 21 days of receiving such identification of claim elements for the `759 and `323 Patents, to identify additional detail on which it may rely concerning each claim element identified by Defendants, including, but not limited to, by identifying the source code lines in each Defendant's source code that it contends meets each claim element identified by Defendants. Any such supplementation shall be within the scope of Wi-LAN's existing infringement contentions. For any source code produced by any Defendant on or after July 19, 2010, Wi-LAN will supplement its existing infringement contentions within 30 days of receipt of Defendant's source code. If Plaintiff wishes to supplement its existing infringement contentions based on any source code or discovery produced to Plaintiff from a third party on or after July 19, 2010, it must seek leave of court pursuant to Local Patent Rule 3-6(b). Interrogatories shall be supplemented in accordance with the Federal Rules of Civil Procedure and the Local Rules.

3. Defendants will reduce the number of prior art invalidity charts for the '222 and '802 patents to 12 anticipation or obviousness charts total for both patents combined. Defendants will reduce the number of prior art invalidity charts for the '759 and '323 patents to 20 anticipation or obviousness charts total for both patents combined. Defendants will specify those anticipation and/or obviousness charts within 14 days of receiving the additional detail provided for in Paragraph 2, above. Defendants' anticipation and/or obviousness charts may include any of the prior art references or combinations referred to in Defendants' Motion to Amend.
4. Plaintiff will identify claim elements with respect to which it seeks additional specificity as to the Defendants' invalidity contentions for the '222, '802, '759 and '323 patents. Within 14 days of such identification, but no earlier than 14 days after Plaintiff provides the supplemental information concerning Plaintiff's infringement contentions as set forth in Paragraph 2 above, Defendants will supplement their invalidity contentions to provide additional detail regarding how each element identified by Plaintiff is met by the references in each prior art chart, along with specific motivations to combine, in narrative format, unique to the specific combination of references.
5. Wi-LAN's Claim Charts are directed toward a subset of the accused products. Wi-LAN contends that the products in this subset are "representative" of certain other accused products identified by Wi-LAN. Defendants will investigate this contention and, within 14 days of the entry of this Order, will inform Wi-LAN whether they agree that the proposed products identified in Wi-LAN's Claim Charts may be treated as

"representative" of the other accused products and/or work with Wi-LAN to identify a reasonable number of representative models to be used in this matter.

6. Wi-LAN will supplement its responses to Defendants' Interrogatories Nos. 16 and 17 within 30 days based upon the currently available information. With respect to Interrogatory No. 16, Wi-LAN will identify, on a defendant by defendant basis, the specific products which it contends make up the accused sales base, along with any facts supporting those contentions. With respect to Interrogatory No. 17, Wi-LAN will provide with specificity the facts supporting its claim for lost profits, including without limitation (1) demand for any allegedly patented Wi-LAN or Ensemble products; (2) Wi-LAN and/or Ensemble's marketing and manufacturing capability; (3) what Wi-LAN or Ensemble products were allegedly competing with any of Defendants' products; and (4) what sales were lost (including parties involved, dates, and quantities/dollar values) and the amount of profit Wi-LAN or Ensemble would have made.

The Court also heard argument on Plaintiff's Motion to Compel Intel to Provide Complete Answers to Certain Interrogatories and to Produce Certain Documents (Dkt. No. 507). The parties advised the Court that Intel filed supplemental interrogatory responses that they believe will resolve the majority of issues in Plaintiff's motion to compel and that the parties have resolved the remaining issues related to document production raised in the motion to compel. Accordingly, Plaintiff's Motion to Compel Intel to Provide Complete Answers to Certain Interrogatories and to Produce Certain Documents (Dkt. No. 507) is DENIED AS MOOT. The Court ORDERS that any motions regarding Intel's supplemental interrogatory responses must be filed by August 17, 2010. The Court FURTHER ORDERS that:

- Intel must produce documents from the custodians listed in Plaintiff's motion to compel by August 13, 2010;
- Intel must produce technical documents and schematics raised in Plaintiff's motion to compel at an escrow facility pursuant to the parties' agreement by August 13, 2010;
- If Plaintiffs wish to amend their infringement contentions based on these schematics, it must file a motion for leave to amend with the Court by September 13, 2010;
- Intel must produce documents from Intel's CEO, Mr. Otellini, by August 6, 2010; and
- Intel must produced all licenses that refer to standards other than the accused standards by August 26, 2010.

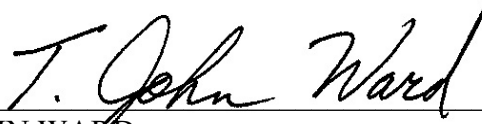
The Court also heard argument on Plaintiff's Motion to Compel Defendants to Produce CSIRO Litigation Materials (Dkt. No. 546). Defendants represented to the Court that they had produced redacted copies of the expert reports at issue and were willing to produce unredacted copies of the reports after receiving consents from third parties whose confidential information is included in the reports. The parties represented that this would likely resolve all issues raised in Plaintiff's motion to compel. The Court will, therefore, carry Plaintiff's Motion Compel Defendants to Produce CSIRO Litigation Materials (Dkt. No. 546) based on the representations of the parties at the hearing. The Court ORDERS that within 5 days of receiving responses from third parties regarding their consent or lack of consent, Defendants will notify the Court by letter as to whether there are any remaining issues that need to be decided with respect to the production of CSIRO litigation materials raised in Plaintiff's motion to compel.

The parties also addressed Plaintiff's Motion to Compel Defendants to Provide Timely and Responsive Discovery (Dkt. No. 563). The parties advised the Court that they believed that,

given more time, they could reach agreement on this motion. Accordingly, the Court will carry Plaintiff's Motion to Compel Defendants to Provide Timely and Responsive Discovery (Dkt. No. 563) based on the representation of the parties. The Court ORDERS that the parties are to meet and confer regarding Plaintiff's Motion to Compel Defendants to Provide Timely and Responsive Discovery (Dkt. No. 563). The parties are FURTHER ORDERED to notify the Court by August 6, 2010 as to whether they have reached an agreement on this motion. If the parties do not reach an agreement as to this motion by August 6, 2010, the Court will decide the motion on the papers.

IT IS SO ORDERED.

SIGNED this 29th day of July, 2010.

A handwritten signature in black ink that reads "T. John Ward". The signature is written in a cursive style with a horizontal line underneath it.

T. JOHN WARD
UNITED STATES DISTRICT JUDGE